

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
: 14-CR-160 (VEC)
-against- :
: ORDER
FRANK DITOMASSO, :
Defendant. :
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VALERIE CAPRONI, United States District Judge:

WHEREAS on August 12, 2021, the Court received two letters from Defendant Frank DiTomasso, appended to one of which was a sworn affidavit from his uncle, Robert Marcus, purporting to confess to the crime for which Mr. DiTomasso was convicted [Dkts. 160-61];

WHEREAS on August 20, 2021, the Court informed Mr. DiTomasso that, to the extent he seeks to vacate or set aside his conviction on the basis of Mr. Marcus' sworn affidavit, he must file a habeas petition pursuant to 28 U.S.C. § 2255 [Dkt. 162]; and

WHEREAS on September 7, 2021, the Court received a letter from Mr. DiTomasso, dated August 29, 2021, seeking to file a habeas petition pursuant to the Court's instruction [Dkt. 164];

IT IS HEREBY ORDERED that the Court construes Mr. DiTomasso's letter dated August 29, 2021, as a habeas petition filed pursuant to 28 U.S.C. § 2255.

IT IS FURTHER ORDERED that, pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, the Clerk of Court is directed to assign counsel to Mr. DiTomasso for purposes of his habeas corpus petition. Upon doing so, the Clerk of Court is further directed to inform the Court of the name and contact information of the assigned counsel.

IT IS FURTHER ORDERED that the newly assigned defense counsel must file a supplemental brief in support of his petition not later than **October 29, 2021**. If defense counsel

requires more time, he or she may request an extension of this deadline from the Court. The Government must respond not later than **November 24, 2021**. Defendant may reply in further support of his motion not later than **December 2, 2021**.

IT IS FURTHER ORDERED that the Clerk of Court send a copy of this order to Mr. DiTomasso at F.C.I. Otisville, P.O. Box 1000, Otisville, N.Y. 10963.

SO ORDERED.

Date: **September 13, 2021**
New York, New York



VALERIE CAPRONI
United States District Judge